TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1893.

No. 152.

ROBERT A. CHESEBROUGH, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 30, 1893.

(18,719.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

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ROBERT A. CHESEBROUGH, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 United States District Court, Southern District of New York.

ROBERT H. CHESEBROUGH, Claimant in Error,
against
THE UNITED STATES.

Statement.

1902.
May 23. Petition filed.
May 27. Demurrer filed.
June 12. Order sustaining demurrer and dismissing petition entered.
June 13. Judgment on demurrer entered.
July 3. Writ of error allowed.
July 10. Petition for writ of error filed.
" " Writ of error and proof of service thereof filed.
" " Citation and proof of service thereof filed.
Jul- 10. Bond on writ of error filed.
Do. Assignment of errors filed.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you, between Robert A. Chesebrough, claimant, against The United States, a manifest error hath happened, to the great damage of the said Robert A. Chesebrough, as is said and appears by his petition, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 21st day of July next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 3d day of July, in the year of our Lord, one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

{Seal District Court of the United States, Southern District of N. Y.}

THOS. ALEXANDER,
Clerk U. S. District Court.

The foregoing writ is allowed.

GEO. B. ADAMS,
U. S. District Judge.

3 [Endorsed:] 4–117 Robert A. Chesebrough, claimant in error, against The United States. Writ of error. A copy of the within paper has been this day received at this office, Jul- 10 1902 Henry L. Burnett, U. S. attorney. P. U. S. district court Filed Jul- 10 1902.

4 By the Honorable George B. Adams, judge of the United States district court for the southern district of New York, to the United States, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court to be holden at the city of Washington on the 21st day of July, 1902, pursuant to a writ of error filed in the office of the clerk of the district court of the United States for the southern district of New York, wherein Robert A. Chesebrough is the claimant against the United States, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district above named, this 3d day of July, in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

GEO. B. ADAMS,
Judge of the District Court of the United States for the Southern District of New York.

5 [Endorsed:] 4–117. Supreme Court of the United States. Robert A. Chesebrough, claimant, against The United States. Citation. Coudert Brothers, att'ys for claimant, 71 Broadway, New York. A copy of the within paper has been this day received at this office. Jul- 10, 1902. Henry L. Burnett, U. S. attorney. P. U. S. district court. Filed Jul- 10, 1902.

6 UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, Thomas Alexander, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 21st day of October, in the year of our Lord one

thousand nine hundred and two, and of the Independence of the said United States the one hundred and twenty-seventh.

{ Seal District Court of the United States, Southern District of N. Y. }

THOS. ALEXANDER, *Clerk.*

7 In the District Court of the United States for the Southern District of New York.

ROBERT A. CHESEBROUGH, Claimant, *against* THE UNITED STATES. } Petition No. —.

Action against United States under act of March 3rd, 1887.

Robert A. Chesebrough, the petitioner above named, by Coudert Brothers, Esq., his attorneys, for his petition against the United States, respectfully shows to the court and alleges:

I. That at all the times hereinafter mentioned the petitioner was and he now is a citizen of the United States and of the State of New York, residing within and an inhabitant of the southern district of New York.

II. That on the 27th day of May, in the year 1900, the petitioner was and had, for a long time prior to the year 1898, been the owner in fee-simple of certain real estate and premises within the borough of Manhattan, city of New York, commonly known as Nos. 21–24 State street, and on or about the 28th day of May, 1900, he made and entered into an agreement with the Chesebrough Building Company, a corporation organized under the laws of the State of New York, under which he, the said petitioner, agreed to convey to the said corporation the said real estate and premises by a deed of conveyance in common form with the usual covenants, and to execute and deliver such deed on the fifth day of June, in the year 1900, for and in consideration of the sum of six hundred thousand dollars ($600,000.00) of the capital stock of said company, being six thousand (6,000) shares of a par value of one hundred dollars ($100) each.

8 That thereafter pursuant to said agreement and on the fifth day of June, in the year 1900, the petitioner made, executed and delivered to the said corporation a deed of conveyance of the said real estate and premises, in common form with the usual covenants, a true copy of which is hereto annexed, made a part of this petition and marked "Exhibit A," and received from said corporation the stock above stated as the consideration named in the said agreement.

III. That under the common and statute law of the State of New York, petitioner could not sell or convey said real estate and give a valid title to the purchaser without making, executing and delivering a deed of conveyance thereof, and the petitioner's right to sell and dispose of said real estate was an essential element of his right of ownership in fee-simple thereof.

IV. That at the time of the execution and delivery of such deed there was in force the act of Congress of June 13th, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," which act provided in part as follows:

"SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied collected and paid, for and in respect of the several bonds, debentures or certificates of stock, and of indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified
9 or set forth in the said schedule."

"SCHEDULE A."

"Conveyance: deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers or any other person or persons, by his, her or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents."

"SEC. 7. That if any person or persons shall make, sign or issue, or cause to be made, signed or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document or paper, as aforesaid, shall not be competent evidence in any court."

And that such law being in force the Chesebrough Building Company, as was known to petitioner, was unwilling to accept the said deed of conveyance unless and until petitioner had placed thereon the stamps required by the aforesaid act, and that petitioner under compulsion of said law, and in order to receive from the purchaser the shares of stock named as the consideration for such conveyance, and in order to entitle such deed to be recorded under the provisions of said act, and to be received as evidence in the Federal courts, as therein provided and in order to enable the petitioner to fulfill his aforesaid
10 contract with said Chesebrough Building Company to make, execute and deliver to said company a good and sufficient deed of conveyance of said real estate and premises, and in order to give to said company a good and clear title to said real estate and

premises, free from doubt, did purchase from Charles H. Treat, the United States collector of internal revenue for the second district of New York, and place upon the said deed of conveyance stamps to the amount of six hundred dollars ($600) the proceeds of sale of which stamps your petitioner believes were thereupon by said collector paid over to the United States as required by law, and said moneys are now held by the United States.

V. That prior to the institution of this action, the petitioner, pursuant to the laws of the United States and the regulations of the Treasury Department in such case made and provided, did make, a written application to the United States Commissioner of Internal Revenue within two years from the date of the purchase of said stamps, to wit, on the ninth day of January, 1902, for the refunding of the amount so paid by him for stamps as aforesaid, which application was by said Commissioner thereupon, and prior to the commencement of this action, denied.

VI. That, as petitioner is advised by counsel, the portions of said War-revenue law of June 13th, 1898, under which the petitioner was compelled to pay to the United States the said tax or duty in the purchase of said stamps are unconstitutional and void and in violation of the following clauses of the Constitution of the United States, to wit, the third clause of the second section of the first article, which provides:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons including those bound
11 to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons;"

as amended by section 2 of the XIVth amendment, which provides:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed;"

and the first clause of the eighth section of the first article which provides:

"1. The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;"

and the fourth clause of the ninth section of the first article which provides:

"No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

In that the duty or tax so provided in the aforesaid portions of said act of Congress to be paid through the purchase and affixing of documentary stamps on all deeds of conveyance of real estate is a

direct tax within the meaning of the provisions of the clauses and sections of the Constitution above referred to.

Wherefore, the petitioner demands judgment for the sum of six hundred ($600.00) dollars, with the costs of this action, and all proper relief in the premises.

COUDERT BROTHERS,
Attorneys for Petitioner, No. 71 Broadway, Borough of Manhattan, New York City, N. Y.

12 STATE OF NEW YORK, }
County of New York, } ss.:

Robert A. Chesebrough, being duly sworn, says, that he is the petitioner herein; that he has read the foregoing petition subscribed by him and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ROB'T A. CHESEBROUGH.

Sworn and subscribed to before me, this 18th day of February, 1902.

CHAS. FRIEDENBERG,
[SEAL.] *Notary Public, N. Y. Co.*, #73.

Endorsed: Petition. Filed May 23, 1902. A copy of the within petition has been this day received at this office March 24, 1902 Henry L. Burnett, U. S. attorney.

13 District Court of the United States, Southern District of New York.

ROBERT A. CHESEBROUGH, Claimant, }
against
THE UNITED STATES. }

The United States above named by its attorney, Henry L. Burnett, demurs to the petition of the above-named claimant herein on the ground,

First. That said petition does not state facts sufficient to constitute a claim on the part of the claimant against the United States.

Wherefore the United States demands that said petition be dismissed with costs.

HENRY L. BURNETT,
United States Attorney, Attorney for Plaintiffs.

Office & P. O. address, Room 50, P. O. building, New York city.

Endorsed: Demurrer—Filed May 27, 1902.

14 At a stated term of the United States district court held in and for the southern district of New York, at the United States court and post-office building, in the borough of Manhattan, in the city of New York on the 12 day of June, 1902,

Present: Hon. George B. Adams, district judge.

ROBERT A. CHESEBROUGH, Complainant,
vs.
THE UNITED STATES.

This cause having been regularly brought on for argument upon the issues of law formed by the complaint of the plaintiff, and the demurrer of the defendant at a stated term of this court held by me in and for the southern district of New York, at the United States court and post-office building in the borough of Manhattan, city of New York, on the 12 day of June, 1902, and the said cause having been duly submitted to Henry L. Burnett, for the defendant, in support of the demurrer, and by Coudert Brothers, for the plaintiff, in opposition to said demurrer, it is on motion of Henry L. Burnett, United States attorney for the southern district of New York, and attorney for the defendant,

Ordered, adjudged and decreed that the said demurrer be and the same hereby is sustained, and that the petition herein be, and the same hereby is dismissed.

GEORGE B. ADAMS.

Assented to as to form.
COUDERT BROTHERS,
Att'ys for Claimant.

Endorsed: Order directing judgment. Filed June 12, 1902.

15 At a stated term of the district court of the United States, held in and for the southern district of New York, in the Post-office building in the borough of Manhattan, in the city of New York, on the 12th day of June, 1902,

Present: Hon. George B. Adams, district judge.

ROBERT A. CHESEBROUGH, Plaintiff,
vs.
THE UNITED STATES, Defendant.

This action having been brought on for argument before the Honorable George B. Adams, district judge, at a stated term of this court, held on the 12th day of June, 1902, at the United States court and post-office building, in the borough of Manhattan, city of New York, the plaintiff appearing by Coudert Brothers, attorneys for petitioners, and the said court, on motion of Henry L. Burnett, having filed an order dated the 12th day of June, 1902, sustaining said demurrer, and ordered that final judgment be directed for the defendant,

Now, on motion of Henry L. Burnett, United States attorney for the southern district of New York, attorney for defendant, it is

Ordered, adjudged and decreed that the said demurrer be and the same hereby is sustained, and that the petition herein be and the same hereby is dismissed.

Judgment signed the 12th day of June, 1902, at 10.38 o'clock a. m.

GEO. B. ADAMS.

Assented to as to form.
COUDERT BROTHERS,
Attorneys for Claimant.

Endorsed: Judgment. Filed June 12, 1902.

16 United States District Court for the Southern District of New York.

ROBERT A. CHESEBROUGH, Claimant,
against
THE UNITED STATES.

Now comes Robert A. Chesebrough, the claimant herein and says:

That on or about the 12th day of June, 1902, this court entered a judgment herein in favor of the United States and against the claimant in which judgment and proceedings prior thereunto in this case certain errors were committed to the prejudice of this claimant; all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this claimant prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated, New York, June 24th, 1902.

COUDERT BROTHERS,
Attorneys for Claimant, No. 71 Broadway, New York City.

Endorsed: Petition for writ of error Filed July 10, 1902 A copy of the within paper has been this day received at this office July 10, 1902 Henry L. Burnett, U. S. attorney.

17 District Court of the United States of America for the Southern District of New York.

ROBERT A. CHESEBROUGH, Claimant in Error,
against
THE UNITED STATES.

Bond for Damages and Costs.

Know all men by these presents, that we, Paul Fuller and Frederic R. Coudert, Jr., are held and firmly bound unto the above-named The United States in the sum of two hundred and fifty dollars, to be paid to the said The United States; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 24th day of June, in the year of our Lord, one thousand nine hundred and two.

Whereas, the above-named Robert A. Chesebrough has sued out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of

the district court of the United States for the southern district of New York.

Now therefore, the condition of this obligation is such that if the above-named Robert A. Chesebrough shall prosecute the said writ to effect and answer all damages and costs, if he fails to make his appeal or writ good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

PAUL FULLER. [L. S.]
FREDERIC R. COUDERT, JR. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of June, 1902, before me—

[SEAL.] CHAS. A. CONLON,
Notary Public, New York County.

18 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Paul Fuller and Frederic R. Coudert, Jr., being duly sworn do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

PAUL FULLER.
FREDERIC R. COUDERT, JR.

Sworn to this 24th day of June, A. D., 1902, before me—

[SEAL.] CHAS. A. CONLON,
Notary Public, New York Co.

Accepted
HENRY L. BURNETT,
U. S. Attorney.

Approved
GEO. B. ADAMS,
U. S. District Judge.

N. Y. Oct. 27th, 1902.

Endorsed: Bond. Filed July 10, 1902 A copy of the within paper has been this day received at this office July 10, 1902 Henry L. Burnett U. S. attorney

19 Supreme Court of the United States.

ROBERT A. CHESEBROUGH, Claimant in Error,
against
THE UNITED STATES.

Afterwards, to wit, on the 24th day of June, 1902, before the Supreme Court of the United States, at the city of Washington, comes the said claimant in error, by Coudert Brothers, his attorneys, and says, that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears:

First. That the judgment aforesaid, in form aforesaid given, was given for the United States against the said claimant in error.